TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 502 204.

HENRY W. DOOLEY, LOUIS G. SMITH, AND CHARLES W. OGDEN, TRADING AS COPARTNERS UNDER THE FIRM NAME OF DOOLEY, SMITH & COMPANY, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED DECEMBER 10, 1900.

(17,987.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 11, 1900.

24086

1 Circuit Court of the United States, Southern District of New York.

HENRY W. DOOLEY, LOUIS G. SMITH, and CHARLES W. Ogden, Trading as Copartners under the Firm Name of Dooley, Smith & Company,
against
THE UNITED STATES OF AMERICA.
} Action No. 2.

Plaintiffs' Petition for Writ of Error.

And now come Henry W. Dooley, Louis G. Smith, and Charles W. Ogden, trading as copartners under the firm name of Dooley, Smith & Company, and conceiving themselves aggrieved by the judgment entered herein on the 30th day of November, 1900, do hereby pray that a writ of error be allowed from the said judgment, returnable to the Supreme Court of the United States, and that a transcript of the record and proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

And they present herewith their assignment of errors.

HENRY M. WARD,
Attorney for Plaintiffs in Error,
No. 45 William Street, New York City.

And now, to wit, on the 4th day of December, 1900, it is—
Ordered that the writ of error be allowed as prayed for.

E. H. LACOMBE,
United States Circuit Judge.

2 (Endorsed:) Circuit court of the United States, southern district of New York. Dooley, Smith & Co. *vs.* United States. Action No. 2. Petition for writ of error. Henry M. Ward, attorney for petitioners; office and post-office address, No. 45 William street, borough of Manhattan, city of New York. U. S. circuit court. Filed Dec. 4, 1900. John A. Shields, clerk.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Henry W. Dooley, Louis G. Smith, and Charles W. Ogden, trading as copartners under the firm name of Dooley, Smith & Company, and The United States of America, a manifest error hath happened, to the great damage of the said Dooley, Smith & Company, as is said and appears by their complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid

in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on or before the 28th day of December, 1900, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 4th day of December, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fifth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.
E. H. LACOMBE,
U. S. Circuit Judge.

4 [Endorsed:] E. & A. B. 1828. Supreme Court of the United States. Dooley, Smith & Co., plaintiff- in error, *vs.* United States, defendant in error. Action No. 2. Writ of error. Henry M. Ward, attorney for plaintiff- in error. Due service of a copy of the within writ of error is hereby admitted this — day of ——, 188–. —— ——, attorney for defendant in error. A copy of the within paper has been this day received at this office. Dec. 5, 1900. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Dec. 5, 1900. John A. Shields, clerk. P. 1.45 chg.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from five to 28, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Henry W. Dooley, Louis G. Smith, and Charles W. Ogden, trading as copartners under the firm name of Dooley, Smith & Company, plaintiff- in error, against The United States of America, defendant in error, action No. 2, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 7th day of December, in the

year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fifth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled Dec. 7, 1900.]

5 In the Circuit Court of the United States for the Southern District of New York.

HENRY W. DOOLEY, LOUIS G. SMITH, and Charles W. Ogden, Trading as Copartners under the Firm Name of Dooley, Smith & Company, *against* THE UNITED STATES OF AMERICA.	Action No. 2. Petition and Complaint.

Henry W. Dooley, Louis G. Smith and Charles W. Ogden bring this their petition and complaint against the United States, and respectfully show to the court as follows:

I. That at all the times hereinafter mentioned the plaintiffs were and they now are citizens of the United States of America and of the State of New York, in which State they have resided for the greater part of their lives and now reside, and the plaintiffs Louis G. Smith and Charles W. Ogden are inhabitants of the southern district of New York, residing in the borough of Manhattan, city of New York, within the southern district of New York.

II. That at the times hereinafter mentioned the plaintiffs were and they now are trading and doing business as copartners under

6 the firm name and style of Dooley, Smith & Company, and that they then had and now have an office for the general transaction of their business at No. 95 Liberty street, in the borough of Manhattan, city of New York, southern district of New York, and that they then had and now have another office for the general transaction of their business in the city of San Juan, in the island of Porto Rico.

III. That the business in which the plaintiffs were engaged at the times hereinafter mentioned, and in which they are now engaged, is that of general commission merchants and exporters of goods from the United States, at the port of New York, in the State of New York, into the island of Porto Rico, at the port of San Juan and the other ports of entry designated by the United States in said island, and importers of goods from the island of Porto Rico and the port of San Juan and other ports in said island to the port of New York, in the State of New York.

IV. That prior to the twelfth day of August, 1898, a state of war existed between the Kingdom of Spain and the United States of America, and prior to said date the said island of Porto Rico belonged to the Kingdom of Spain as a colonial possession thereof, and had been for a long time prior to said date under the sovereignty of the Kingdom of Spain, which had there established a civil government

with the proper civil and municipal authorities, and the said government had enacted, among other laws, certain tariff or customs duties upon imports into the island of Porto Rico from the United States and other countries, and such Spanish or Porto Rican tariff or customs laws were in force at the time of the seizure and occupation of the said island by the military and naval forces of the United States in the month of July, 1898.

V. That on the twelfth day of August, 1898, a protocol,
7 providing for a treaty of peace between the Kingdom of Spain and the United States of America was duly signed by the representatives of both governments, and thereafter and on the tenth day of December, 1898, the treaty of peace was entered into and duly signed by the duly authorized representatives of both governments, and thereafter and on the sixth day of February, 1899, the said treaty was duly ratified by the Senate of the United States of America and was thereafter ratified by the Queen Regent of Spain on the nineteenth day of March, 1899, and by the Spanish cortes, and said treaty was finally ratified by both governments, and ratifications thereof exchanged at the city of Washington in the District of Columbia on the eleventh day of April, 1899, and on the same day proclaimed by the President of the United States of America.

VI. That prior to the signing of the said protocol and in the month of July, 1898, after the first landing of the military forces of the United States upon the said island of Porto Rico, there were a few skirmishes between the United States forces and the Spanish forces stationed on said island, but that all hostilities of every kind ceased from and after the 12th day of August, 1898, the date of the signing of the protocol as aforesaid, and from that date down to the present time there have been no hostilities of any kind upon said island and no military operations of any kind have been conducted by the United States forces against the Spanish forces or against any other hostile forces on said island, but that immediately upon the signing of said protocol and as therein provided the said island was abandoned by Spain and her possession and sovereignty thereof relinquished, and all the Spanish forces were immediately withdrawn and the said island was evacuated and all public property on said island
8 was delivered to and taken possession of by the United States, and said island has ever since been and now is in the peaceful and undisputed possession and under the sovereignty of the United States of America.

VII. That on the first day of May, 1900, the act of Congress of April 12th, 1900, entitled "An act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," went into effect, and that in and by said act of Congress it is provided among other things, that "all merchandise coming into Porto Rico from the United States shall be entered at the several ports of entry upon payment of fifteen per centum of the duties which are required to be levied, collected and paid upon like articles of merchandise imported from foreign countries" into the United States under the existing tariff, established by the act of Congress of July 24th, 1897, commonly known as the Dingley tariff law.

VIII. That the plaintiff, Henry W. Dooley, in behalf of his co-partners and as a member of said firm, being as aforesaid a citizen of the United States and of the State of New York, went to the city of San Juan, in the island of Porto Rico, in the early part of 1899 and prior to May 1st, 1900, and has remained there in connection with the business of said firm until the present time. That since the first day of May, 1900, the plaintiffs, Dooley, Smith & Company have exported from the port of New York, in the State of New York, to the plaintiff, Henry W. Dooley, as their agent in the port of San Juan, Porto Rico, aforesaid, certain goods, wares and merchandise, and the said Henry W. Dooley, or his agent, has been compelled by the customs officers of the United States at San Juan to pay certain sums of money as duties under said act in order to enter such merchandise at that port. That said sums of
9 money assessed as duties as aforesaid by the United States customs officers under the alleged authority of said act of Congress have been paid by the plaintiff Henry W. Dooley, or by his agent, in behalf of the plaintiffs, but under protest and by compulsion of the United States customs officers, and in order to enable the plaintiffs to obtain such merchandise from the custody of the United States.

IX. That the amount of money so collected by compulsion of the United States customs officers, as duties assessed upon the plaintiffs' merchandise at San Juan, Porto Rico, and paid by the plaintiffs or their agent, under protest as aforesaid, from May 1st, 1900, to October 23d, 1900, is fourteen hundred and thirty-three dollars and eleven cents ($1,433.11), which sum of money is now held by the United States of America.

X. The plaintiffs further allege that, as they are informed by counsel, the imposition and collection of the duties aforesaid are in violation of the rights and privileges secured to the plaintiffs as citizens of the United States and of the State of New York, under the Constitution of the United States of America, and that the said act of Congress of April 12th, 1900, in so far as it attempts to impose any tax or duties upon imports from any port of the United States into the island of Porto Rico is unconstitutional and void, and that said sums of money were illegally and wrongfully collected.

XI. And the plaintiffs further allege that no part of the said duties paid under protest as aforesaid has ever been repaid to them by the United States, although payment thereof has been demanded. And by reason of the facts aforesaid, the sum of $1,433.11 is now due and owing to the plaintiffs from the United States.

10 Wherefore plaintiffs demand judgment against the United States for the sum of fourteen hundred and thirty-three and $\frac{11}{100}$ dollars ($1,433.11), with interest and costs.

HENRY M. WARD,
Attorney for Plaintiffs,
No. 45 William Street, New York City.

JOHN G. CARLISLE,
WILLIAM G. CHOATE,
JOSEPH LAROCQUE, JR.,
HENRY M. WARD, *Counsel.*

STATE OF NEW YORK,
Southern District of New York, County of New York, } ss:

Louis G. Smith, being duly sworn, deposes and says: I am one of the plaintiffs above named; that I have read the foregoing petition and complaint, and the same is true of my own knowledge, *except* as to those matters therein alleged upon information and belief, and as to those matters I believe it to be true.

LOUIS G. SMITH.

Sworn to before me this 26th day of October, 1900.

JOHN DAVIS,
[NOTARIAL SEAL.] *Notary Public, New York County.*

Endorsed: U. S. circuit court. Filed Oct. 26, 1900. John A. Shields, clerk.

11 In the Circuit Court of the United States for the Southern District of New York.

HENRY W. DOOLEY, LOUIS G. SMITH, and CHARLES W. OGDEN, Trading as Copartners under the Firm Name of Dooley, Smith & Company,
against
THE UNITED STATES OF AMERICA. } Action No. 2.

STATE OF NEW YORK,
Southern District of New York, County of New York, } ss:

Henry M. Ward, being duly sworn, deposes and says: I am the attorney for the plaintiffs in this action. On the 26th day of October, 1900, I personally filed the original petition and complaint in this action in the office of the clerk of this court, pursuant to section 5, of the act of March 3, 1887, and I thereupon, and on the 26th day of October, 1900, served a copy of said petition and complaint upon the district attorney of the United States for the southern district of New York, as more fully appears by the admission of service, a copy of which is hereunto annexed.

HENRY M. WARD.

Sworn to before me this 29th day of October, 1900.

JOHN DAVIS,
[SEAL.] *Notary Public* (11), *N. Y. Co.*

12 *Admission of Service.*

A copy of the within paper has been this day received at this office.

Oct. 26, 1900.

HENRY L. BURNETT,
U. S. Attorney.

In the Circuit Court of the United States for the Southern District of New York.

HENRY W. DOOLEY, LOUIS G. SMITH, and CHARLES W. Ogden, Trading as Copartners under the Firm Name of Dooley, Smith & Company,
against
THE UNITED STATES OF AMERICA. } Action No. 2.

STATE OF NEW YORK,
Southern District of New York, County of New York, } ss:

Frank W. Jones, being duly sworn, deposes and says:

I am twenty-one years of age and upwards, and am managing clerk for the attorney for the plaintiffs in this action. On the 27th day of October, 1900, I mailed a copy of the above petition and complaint by registered letter, enclosed in a securely closed post-paid wrapper, addressed to the "Honorable John W. Griggs, United States Attorney General, Washington, D. C.," and personally
13 deposited the same in the post-office substation No. 104, No. 29 Wall street, in the city of New York, within the southern district of New York.

[SEAL.] FRANK W. JONES.

Sworn to before me this 27th day of October, 1900.

JOHN DAVIS,
Notary Public (11), *N. Y. Co.*

Endorsed: U. S. circuit court. Filed Oct. 29, 1900. John A. Shields, clerk.

14 United States Circuit Court, Southern District of New York.

HENRY W. DOOLEY, LOUIS G. SMITH, and Charles W. Ogden, Trading as Copartners under the Firm Name of Dooley, Smith & Company,
against
THE UNITED STATES OF AMERICA. } Action No. 2. Demurrer.

The defendant above named, by Henry L. Burnett, United States attorney, attorney for the defendant in the above-entitled action, demurs to the plaintiffs' complaint therein as follows:

First. That the court has not jurisdiction of the subject of the action.

Second. That the complaint does not state facts sufficient to constitute a cause of action.

Dated November 27th, 1900.

HENRY L. BURNETT,
United States Attorney, Attorney for Defendant.

Endorsed: U. S. circuit court. Filed Nov. 27, 1900. John A. Shields, clerk.

15 In the Circuit Court of the United States for the Southern District of New York.

HENRY W. DOOLEY, LOUIS G. SMITH, and CHARLES W. Ogden, Trading as Copartners under the Firm Name of Dooley, Smith & Company,
against
THE UNITED STATES OF AMERICA. } Action No. 2.

This cause coming on to be heard upon the petition filed herein October 26th, 1900, and the demurrer of the United States filed herein November 27th, 1900, I find and conclude that the demurrer should be sustained upon the ground that the petition does not set forth facts sufficient to constitute a cause of action under the authority of the decision of Judge Townsend in the case of Goetze *vs.* United States, decided in this court at the June term, 1900 (103 Fed. Rep., 72).

Let a judgment be entered sustaining the demurrer on this ground and dismissing the petition with costs.

Nov. 30, 1900.

E. HENRY LACOMBE,
United States Circuit Judge.

(Endorsed:) U. S. circuit court, southern district of New York. Dooley, Smith & Co. *vs.* United States. Action No. 2. Decision on demurrer. Henry L. Burnett, United States attorney, attorney for defendant. Due service of a copy of the within is hereby admitted. New York, Nov. 30, 1900. Henry M. Ward, attorney for petitioners. U. S. circuit court. Filed Nov. 30, 1900. John A. Shields, clerk.

16 In the Circuit Court of the United States for the Southern District of New York.

HENRY W. DOOLEY, LOUIS G. SMITH, and CHARLES W. Ogden, Trading as Copartners under the Firm Name of Dooley, Smith & Company,
against
THE UNITED STATES OF AMERICA. } Action No. 2.

Judgment on Demurrer.

This cause having come on to be heard upon the petition filed herein October 26th, 1900, and the demurrer of the United States filed herein November 27th, 1900, and the court having filed its written opinion thereon, it is now, on motion of Henry L. Burnett, Esq., United States attorney—

Ordered, adjudged, and decreed that the demurrer upon the ground that the petition does not set forth facts sufficient to constitute a cause of action be sustained; and it is further

Ordered, adjudged, and decreed that the petition be dismissed, with costs, to be taxed by the clerk.

Dated Nov. 30th, 1900.

E. HENRY LACOMBE, *U. S. C. J.*

Costs taxed at the sum of ten $\frac{50}{100}$ dollars this 4th day of December, 1900.

JOHN A. SHIELDS, *Clerk.*

(Endorsed:) U. S. circuit court, southern district of New
17 York. Dooley, Smith & Co. *vs.* United States. Action No. 2. Judgment on demurrer. Henry L. Burnett, United States attorney, attorney for defendant. Due service of a copy of the within is hereby admitted. New York, Nov. 30, 1900. Henry M. Ward, attorney for petitioners. U. S. circuit court. Filed Nov. 30, 1900. John A. Shields, clerk.

18 United States Circuit Court, Southern District of New York.

HENRY W. DOOLEY, LOUIS G. SMITH, and CHARLES W. OGDEN, Trading as Copartners under the Firm Name of Dooley, Smith & Co.,
vs.
THE UNITED STATES.
} Action No. 2.

This action having been brought on for argument before the Hon. E. Henry Lacombe, circuit judge, at a stated term of this court, held on the 30th day of November, 1900, at the post-office building, in the city of New York, in the southern district of New York, and the plaintiffs having appeared by Henry M. Ward, Esq., their attorney, and the defendant by Henry L. Burnett, U. S. attorney, and argument having been had upon the demurrer to the complaint herein by Henry C. Platt, Esq., assistant U. S. attorney, of counsel for the defendant, in support of the demurrer, and Henry M. Ward, Esq., of counsel for plaintiff, in opposition thereto, and the said court having, on motion of Henry L. Burnett, Esq., U. S. attorney, attorney for the defendant, made and filed a decree, dated 30th day of November, 1900, sustaining the said demurrer and dismissing the complaint herein, and the costs of the defendant having been adjudged at the sum of ten $\frac{50}{100}$ dollars:

Now, on motion of Henry L. Burnett, Esq., U. S. attorney, attorney for the defendant, it is—

Ordered, adjudged, and decreed that the complaint herein be dismissed, and that the defendant recover of the plaintiffs the said sum of ten $\frac{50}{100}$ dollars ($10.50), costs, and that the defendant have execution therefor.

JOHN A. SHIELDS, *Clerk.*

19 (Endorsed:) Action No. 2. United States circuit court. Henry W. Dooley, Louis G. Smith, and Charles W. Ogden, trading under the firm name of Dooley, Smith & Co., *vs.* The United States. Judgment-roll. Henry L. Burnett, United States attorney, attorney for defendant. U. S. circuit court. Filed Dec. 4, 1900. John A. Shields, clerk.

20 Supreme Court of the United States, October Term, 1900.

HENRY W. DOOLEY, LOUIS G. SMITH, and CHARLES W. Ogden, Trading as Copartners under the Firm Name of Dooley, Smith & Company,
against
THE UNITED STATES OF AMERICA.
} Action No. 2.

Assignment of Errors.

Now come Henry W. Dooley, Louis G. Smith, and Charles W. Ogden, trading as copartners under the firm name of Dooley, Smith & Company, by their counsel, and respectfully represent that they feel themselves aggrieved by the proceedings and judgment of the circuit court of the United States for the southern district of New York, second judicial circuit, in the above-entitled cause, and assign errors thereto as follows:

I. The court erred in holding that the imposition and collection of the duties in the island of Porto Rico under the alleged authority of the act of Congress of April 12th, 1900, as set forth in the petition, was not in violation of that portion of the eighth section of the first article of the Constitution of the United States, which declares that "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States."

II. The court erred in holding that the imposition and collection of the duties in the island of Porto Rico under the alleged
21 authority of the act of Congress of April 12th, 1900, as set forth in the petition, were not in violation of that portion of the ninth section of the first article of the Constitution of the United States, which declares that "no tax or duty shall be laid on articles exported from any State."

III. The court erred in holding that the imposition and collection of the duties in the island of Porto Rico under the alleged authority of the act of Congress of April 12th, 1900, as set forth in the petition, were not in violation of that portion of the third section of the fourth article of the Constitution of the United States which declares that "the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States."

IV. The court erred in holding that the imposition and collection of the duties in the island of Porto Rico under the alleged authority of the act of Congress of April 12th, 1900, as set forth in the petition, were not in violation of that portion of the fifth amendment of the Constitution which declares that "no person * * * shall be deprived of * * * property without due process of law; nor shall private property be taken for public use without just compensation."

V. The court erred in holding that the imposition and collection of the duties in the island of Porto Rico under the alleged authority

of the act of Congress of April 12th, 1900, as set forth in the petition, were not in violation of the ninth amendment of the Constitution, which declares that "the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

22 VI. The court erred in holding that the imposition and collection of the duties in the island of Porto Rico under the alleged authority of the act of Congress of April 12th, 1900, as set forth in the petition, were not in violation of the tenth amendment of the Constitution, which declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

VII. The court erred in holding that the imposition and collection of the duties in the island of Porto Rico under the alleged authority of the act of Congress of April 12th, 1900, as set forth in the petition, were not in violation of the treaty of peace made between the United States and Spain, known as "the treaty of Paris."

VIII. The court erred in holding that at the time of the imposition and collection of the duties, as stated in the petition, the island of Porto Rico was not a part of the United States.

IX. The court erred in holding that the duties set forth in the petition were lawfully collected from the petitioners.

X. The court erred in sustaining the demurrer to the petition and in holding that the petition did not set forth facts sufficient to constitute a cause of action.

XI. The court erred in dismissing the petition.

Wherefore the said Henry W. Dooley, Louis G. Smith, and Charles W. Ogden, trading as copartners under the firm name of Dooley, Smith & Company, plaintiffs in error, pray this honorable court to examine and correct the errors assigned and for a reversal of the judgment of the circuit court of the United States for the southern district of New York in the above-entitled cause.

HENRY M. WARD,
Attorney for Plaintiffs in Error, 45 *William St., N. Y.*

23 (Endorsed:) Supreme Court of the United States. Dooley, Smith & Co. *vs.* United States. Action number 2. Assignment of errors. Henry M. Ward, attorney for plaintiffs in error; office and post-office address, No. 45 William street, New York city. U. S. circuit court. Filed Dec. 4, 1900. John A. Shields, clerk.

24 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

HENRY W. DOOLEY, LOUIS G. SMITH, and CHARLES W. Ogden, Trading as Copartners under the Firm Name of Dooley, Smith & Co.,
vs.
THE UNITED STATES OF AMERICA.
} Action No. 2.

Bond for Damages and Costs.

Know all men by these presents that the Lawyers' Surety Company of New York, having an office and principal place of business at Nos. 32, 34, and 36 Liberty street, in the city of New York, county and State of New York, is held and firmly bound unto the above-named defendant, The United States of America, in the sum of two hundred and fifty (250) dollars, to be paid to the said United States of America; for the payment of which, well and truly to be made, it binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with its seal and dated the 1st day of December, 1900.

Whereas the above-named plaintiffs, Dooley, Smith & Co., have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment on demurrer rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Dooley, Smith & Co. shall prosecute their writ of error to effect and answer all damages and costs if they fail to
25 make said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE LAWYERS' SURETY COMPANY OF NEW YORK,
[SEAL.] By THOMAS HUNT, *2nd Vice-President.*

Attest: JOEL RATHBONE, *Secretary.*

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 1st day of December, 1900, before me personally appeared Thomas Hunt, 2nd vice-president of the Lawyers' Surety Company of New York, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the city of New York; that he is the 2nd vice-president of the Lawyers' Surety Company of New York, the corporation described in and which executed the above instrument; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he signed said instrument as 2nd vice-president of said company by like authority, and that the liabilities of

said company do not exceed its assets, as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893; and the said Thomas Hunt further said that he is acquainted with Joel Rathbone and knows him to be the secretary of said company; that the signature of the said Joel Rathbone subscribed to the said instrument is in the genuine handwriting of the said Joel Rathbone and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Thomas
26 Hunt, 2nd vice-president.

H. G. HINTON,
[SEAL.] *Notary Public, Kings Co., N. Y.*

Certificate filed in N. Y. Co.

At a stated meeting of the board of directors of the Lawyers' Surety Company of New York, held at the office of the company, Nos. 32, 34, and 36 Liberty street, in said city, on the 21st day of April, 1897, on motion, it was unanimously—

"Resolved, That the president, the vice-president, the acting president, or the second vice-president be, and either of them is hereby, authorized and empowered to sign, execute, and deliver any and all bonds or undertakings for or on behalf of the company, and to attach thereto the seal of the corporation, the same to be attested by the secretary or the acting secretary."

CITY AND COUNTY OF NEW YORK, *ss:*

I, Joel Rathbone, secretary of the Lawyers' Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a true and correct transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 1st day of December, 1900.

[SEAL.] JOEL RATHBONE, *Secretary.*

(Endorsed:) Circuit court of the United States, southern
27 district of New York. Dooley, Smith & Co. *vs.* United States. Action number 2. Bond for damages and costs. Henry M. Ward, attorney for petitioners; office and post-office address, No. 45 William St., borough of Manhattan, city of New York. Approved as to form, and also as to sufficiency of sureties, with reservation, however, to the United States of the right at any time to examine the proper officers of the surety company, under oath, touching its assets, liabilities, and financial condition generally. E. H. Lacombe, U. S. circuit judge. U. S. circuit court. Filed Dec. 4, 1900. John A. Shields, clerk.

28 By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to Henry L. Burnett, Esq., United States attorney for the southern district of New York, attorney for the United States of America, and to the United States of America, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the Capitol, in the city of Washington, in the District of Columbia, on the 28th day of December, 1900, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Dooley, Smith & Company are plaintiffs in error and The United States of America is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Seal of U. S. Circuit Court, South. Dist. New York.

Given under my hand, at the borough of Manhattan, in the city of New York, in the district and circuit above named, this 4th day of December, in the year of our Lord one thousand nine hundred, and of the Independence of these United States the one hundred and twenty-fifth.

E. H. LACOMBE,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

29 [Endorsed:] E. & A. B. 1828. Supreme Court of the United States. Dooley, Smith & Co. *vs.* United States. Action No. 2. Citation. Henry M. Ward, attorney for pl'ff- in error, 45 William St., New York city. A copy of the within paper has been this day received at this office. Dec. 5, 1900. Henry L. Burnett, U. S. attorney. P. U. S. circuit court. Filed Dec. 5, 1900. John A. Shields, clerk. 10 chg.

Endorsed on cover: File No., 17,987. S. New York C. C. U. S. Term No., 502. Henry W. Dooley, Louis G. Smith, & Charles W. Ogden, trading as copartners under the firm name of Dooley, Smith & Company, plaintiffs in error, *vs.* The United States. Filed December 10th, 1900.

No. 207.

Dooley et al.

v.

The United States.

For Briefs herein see

Vol. 34 of Records &

Briefs of 1900.